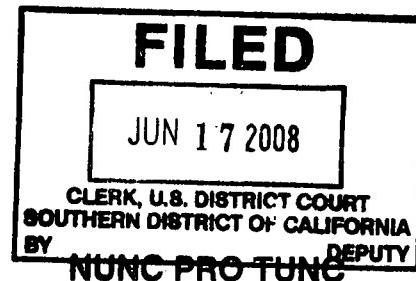


Wayne Holloway V04793  
CMC EAST  
P.O. BOX 8101  
SAN LUIS OBISPO, CA 93409



JUN 11 2008

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Wayne Holloway, Petitioner, vs. John Marshall, Warden, Respondent. Case No. \_\_\_\_\_ Related No. 08cv0861 JM(AJB) Motion For Reconsideration Fed Rule C.P. Rule 60 (en banc review requested)

To the Honorable Justice Jeffrey T. Miller and his Associates of the Federal District Court, comes now Petitioner Wayne Holloway, appearing in propria persona, in this motion for reconsideration of the adjudicated 1651 writ of habeas corpus under case number 08cv0861JM(AJB). Petitioner Holloway requests for reconsideration on the following grounds :

I

Successive Writ is not applicable here where the issue raised under prior Writ was dismissed for technical or procedural reasons rather than on the merits.

1       First, the underlying issue here is the constitutional inva-  
2       lidity of Petitioner's strike prior which was raised in a 2254  
3       Writ of Habeas Corpus and suddenly denied by the southern dist  
4       court on the grounds that the United States Supreme Court had  
5       curtailed a petitioner's rights to challenge strike prior on  
6       constitutional grounds in a 2254 Writ of Habeas Corpus. The dist  
7       court then cited Lackawanna County Dist Atty v. Coss 532 US 394  
8       to justify their denial without reaching the merits of Petition-  
9       er's constitutional invalidity claim of strike prior.

10      On the contrary, however, a second or subsequent petition  
11     for habeas corpus is not considered successive if the initial  
12     habeas petition was dismissed for a technical or procedural  
13     reason rather than on the merits. Slack v. McDaniel 529 US 476;  
14     Stewart v. Martinez-Villareal 523 US 637; e.g. In re Turner 101  
15     f.3d 1323 (9th Cir 1996)

16      Petitioner Holloway's constitutional invalidity claim was  
17     clearly dismissed on either a technical or procedural purpose  
18     without reaching the merits of this claim. The court, once again  
19     held that Lackawanna precluded Petitioner Holloway from chal-  
20     lenging his strike prior conviction on the basis that he was  
21     denied his rights to be present at a readback. (see order filed  
22     5/11/07(Doc No.29) Case No. 06cv0276-LAB(PCL) )

23      Petitioner nonetheless demands reconsideration on the in-  
24     stant 1651 Writ of Habeas Corpus, a concise ruling on the merits,  
25     and ask this matter be brought in compliance and/or in confor-  
26     mation with the existing law.

1 I declare that I am an indigent litigate and present this  
2 motion under the penalty of perjury that the foregoing is true  
3 and correct supported by the certified record associated to  
4 this matter.

5  
6  
7 Dated : Jun 4, 2008

Respectfully Submitted



9  
10 Wayne Holloway  
11 In Pro Se

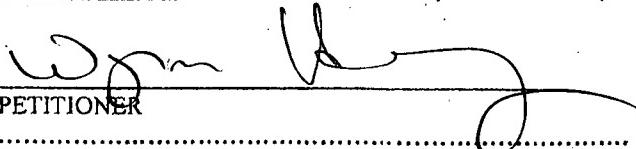
STATE OF CALIFORNIA  
 COUNTY OF SAN LUIS OBISPO

I am the party of the above entitled actions, a citizen of the United States and over the age of eighteen years, and a resident of San Luis Obispo County. My current address is:

Wayne Holloway  
 California Men's Colony East  
 P.O. Box 8101 Room 2178  
 San Luis Obispo, CA, 93409-8101

I CERTIFY ( OR DECLARE), UNDER PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON June 4, 2008, AT SAN LUIS OBISPO, CALIFORNIA,  
 93409-8101.

  
 PETITIONER

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA  
 COUNTY OF SAN LUIS OBISPO

I AM A RESIDENT OF SAID COUNTY, I AM OVER THE AGE OF EIGHTEEN YEARS AND ~~NOT~~ A PARTY TO THE ABOVE ENTITLED ACTION. MY BUSINESS ADDRESS IS:

Wayne Holloway  
 CALIFORNIA MEN'S COLONY-EAST  
 P.O. BOX 8101 / Room 2178  
 SAN LUIS OBISPO, CALIFORNIA 93409-8101

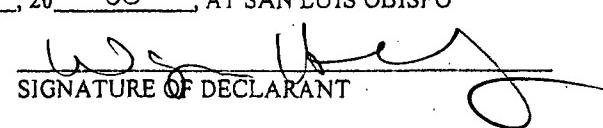
ON June 4, 2008, I SERVED THE WITHIN Motion  
for Reconsideration

ON THE PARTY: Dist Atty., Appellate Div.; Clerk of the Sup Court Superior Court Appeals Section

IN SAID ACTION, BY PLACING A TRUE COPY THEREOF IN A SEALED ENVELOPE WITH POSTAGE THEREON PREPAID, IN THE UNITED STATES MAIL, AT CALIFORNIA MEN'S COLONY, SAN LUIS OBISPO, CALIFORNIA, 93409-8101, ADDRESSED AS FOLLOWS:

<u>Dist Atty., Appellate Div</u>	<u>Clerk of the Sup Court</u>
<u>330 W. Broadway, Suite 920</u>	<u>Superior Court Appeals</u>
<u>San Diego, Ca 92101-3803</u>	<u>Section, P.O. BOX 128</u>
	<u>San Diego, Ca 92112</u>

I DECLARE, UNDER PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT.  
 EXECUTED ON June 4, 2008, AT SAN LUIS OBISPO  
 COUNTY, CALIFORNIA.

  
 SIGNATURE OF DECLARANT